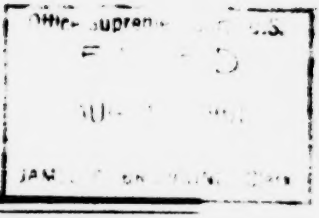

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No. 31

MISSISSIPPI VALLEY BARGE LINE COMPANY,
Petitioner,

versus

INLAND WATERWAYS SHIPPERS ASSOCIATION and
L. B. FOSTER COMPANY,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

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MISSISSIPPI VALLEY BARGE LINE COMPANY,
Petitioner,

versus

INLAND WATERWAYS SHIPPERS ASSOCIATION and
L. B. FOSTER COMPANY,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Eighth Circuit.

Mississippi Valley Barge Line Company prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Eighth Circuit affirming a judgment rendered by the United States District Court for the Eastern District of Missouri in favor of respondents and against petitioner.

OPINIONS BELOW.

The opinion of the Court of Appeals (App. Infra, p. 1a) is reported at 289 F. 2d 374. The opinion and judgment of the District Court (R. 139-145) is not yet reported.

JURISDICTION.

The judgment of the Court of Appeals affirming the District Court was entered on April 26, 1961 (App. infra, pp. 15a-16a). A rehearing was timely applied for and was refused on May 22, 1961 (App. infra, p. 16a). The mandate of the Court of Appeals was sent down to the District Court on June 6, 1961.

Jurisdiction herein is invoked under the Act of June 25, 1948, c. 646, 28 U. S. C. 1254, 62 Stat. 928.

QUESTIONS PRESENTED FOR REVIEW.

I.

May a common carrier by water, subject to Part III of the Interstate Commerce Act, which issues a bill of lading and promulgates a tariff (filed with and approved by the Interstate Commerce Commission) whereby it places upon a shipper the duty of loading and stowing cargo in an unmanned, non-self-propelled barge, be held liable for damage to cargo resulting from the negligence of the shipper's agent in loading the cargo?

II.

May the Bill of Lading Act be read together with the Harter Act as compatible legislation so that the duty to load and stow cargo properly on an unmanned, non-self-propelled barge may be imposed on the shipper by the use of a "Shipper's Load and Count" bill of lading, or is the Bill of Lading Act meaningless in this context?

III.

May a District Court strike with nullity one provision of a regulated water carrier's bill of lading contained in a tariff duly filed with and approved by the Interstate Commerce Commission and affecting the entire rate struc-

ture of the carrier, or is jurisdiction vested in the Commission to act in the first instance to determine the validity of the challenged clause *vel non* and in its relation to other conditions of carriage?

STATUTES INVOLVED.

The Harter Act, Sections 1, 2 and 3, Act of February 13, 1893, c. 105, 27 Stat. 445, 46 U. S. C. 190, 191, and 192.[1]

The Bill of Lading Act, Section 21, Act of August 29, 1916, c. 415, 39 Stat. 541, 49 U. S. C. 101.[2]

The Interstate Commerce Act, Sections 306 (a) and 306 (c), Part III, Act of February 4, 1887, c. 104, Act of September 18, 1940, c. 722, Section 201, 54 Stat. 935, 49 U. S. C. 906.[3]

STATEMENT OF THE CASE.

This action was commenced as a classic suit for cargo damages and was originally brought in the Circuit Court for the City of St. Louis on February 15, 1957 (R. 1-3). The requisite jurisdictional amount being involved, the case was removed to the United States District Court for the Eastern District of Missouri, Eastern Division, on March 12, 1957, on the ground of diversity of citizenship (R. 6). It was divided into two counts, each count referring to a separate shipment (R. 1-3). This petition for a writ of certiorari to review the decision of the Court of Appeals for the Eighth Circuit is limited to the questions of law set forth above, all of which are presented by the Count 2 allegations and proof adduced in the District Court. No review of the Count 1 portion of the decision is sought.

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[1] Infra, p. 16a.

[2] Infra, p. 18a.

[3] Infra, p. 19a.

Petitioner, Mississippi Valley Barge Line Company (Valley), is a common carrier certificated by the Interstate Commerce Commission to transport general commodities between various points on the inland waterway systems in accordance with its Tariff on file with the Commission. Respondent, Inland Waterways Shippers Association (Inland), is a pool shipper—one which makes up full barge loads for its customers in order to take advantage of maximum load barge rates (R. 45, 46). Respondent, L. B. Foster Company (Foster), is one of Inland's customers.

Foster is a pipe sales company located at Houston. It bought some new 16 inch pipe from Youngstown Sheet and Tube Company at Youngstown, Ohio, f. o. b. cars at the mill, and directed that the pipe be shipped to it by rail at Pittsburgh in care of Inland (R. 46). The latter company then contacted Valley and arranged for it to move the shipment, with shipments of its other customers, on a barge from Pittsburgh to Houston (R. 50, 99).

Valley does not hold itself out as having, and in fact does not have, loading facilities, or terminal, and does no stevedoring at Pittsburgh (R. 84, 95). Its Tariff requires loading, stowing and discharging of all shipments to be handled by the shipper at the shipper's cost. Its bill of lading form, quoted in full in its Tariff, recites that the shipments have been loaded and counted by the shipper. When contacted by a prospective shipper, the shipper is advised of this (if that fact is not already known) (R. 95). In the instant case, since Inland and Valley had done business over a long period of time, the Houston Manager of Inland wired the Manager of Marion Coal and Transfer Company at Pittsburgh and advised him of the contemplated shipment, and Valley's General Freight Agent at Pittsburgh was then notified by Marion as Inland's agent to spot a non-self-propelled, unmanned barge at Marion's dock (R. 99). Marion is an independent terminal

operator having no connection with Valley by stock ownership, directors, officers, employers, or otherwise.

Marion loaded the barge with 22 lots of steel weighing approximately 1030 tons for account of a dozen of Inland's customers (R. 77). During the loading operation, no representative of Valley was present, and all charges of Marion for loading the cargo were billed directly to and paid by Inland (R. 51, 57, 87).

A Valley towboat picked up the barge and towed it down-river as a routine matter to Owensboro, Kentucky, where it was spotted, on orders of Inland subject to Tariff provisions for stop-off to complete loading, at the plant of Green River Steel and Supply Company. That company then loaded on the barge an additional 43 tons of steel billets (R. 75, 92). As in the original loading, Green River had no connection in any way with Valley, and acted for and was paid by Inland.

On outturn of the pipe at destination (Houston), it was found to have been dented over large areas. The District Court found (and the finding is supported by the record) that the pipe had been damaged by improper stowage, in that heavy steel bars and tubing had been loaded on top of the pipe by Marion at Pittsburgh (the nature of the damage left no doubt that it was caused by the top loading of the pipe in Pittsburgh or the billets at Owensboro) and that the weight of the heavy cargo on the pipe had crushed it and caused the damage (R. 143). Petitioner accepts this finding, both as to the cause of the loss and the amount thereof.

In addition to the rate schedules for transporting hundreds of commodities between various points, Valley's Tariff 25-C, I. C. C. No. 101 incorporates the terms and conditions of its bill of lading which was used in connection with the movement under consideration. In brief,

Item 700,[4] quoted in the bill of lading, provided that Valley would assume liability for all damages to shipments which it moved, including those arising from marine perils, Acts of God, fire, general average and salvage; it excepted, however, loss or damage caused by reason of improper stowage, insufficiency of packing and other causes attributable solely to the shipper's acts or the inherent nature of the cargo. The bill of lading shows on its face that it is a "Shipper's Load and Count" lading (R. 75). Since the shipper and the consignee named in the bill of lading were one and the same, and since the bill of lading was a straight bill of lading, no rights of third parties have intervened and no estoppel as against the carrier can arise.

The record herein, therefore, presents a simple case involving a claim for recovery of damage to cargo caused by the negligence of the cargo owner in improperly stowing the cargo. The District Court and the Court of Appeals held that the Harter Act requires the carrier to load and stow the cargo, and visited liability on the carrier for the negligent stowage, this holding being made in the face of the rate structure which was approved by the Interstate Commerce Commission, and which does not contemplate that the carrier has any duties or responsibility for the loading, stowage or discharge of the cargo. The holding of the Courts below likewise negates the possibility of using a "Shipper's Load and Count" bill of lading in connection with water transportation, although the Bill of Lading Act clearly makes no distinction between rail, motor, and water transportation, and clearly authorizes the use of this type of bill of lading; and finally the holding of the Courts below substitutes the judgment of the court for that of the Interstate Commerce Commis-

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[4] The pertinent portion of § 10 of the bill of lading which also refers to Item 700 of the Tariff is quoted infra, p. 21a.

sion in the broad field of rate structures and conditions of carriage which materially affect the transportation policies of the entire country.

REASONS FOR GRANTING THE WRIT.

I.

Although the amount involved in this case is of no great moment,[5] the principle for which it stands is of transcendent importance to petitioner and the transportation industry of which it is a part. It is, of course, recognized that the Harter Act, when applied to ocean carriage, has been interpreted consistently by the courts as requiring a shipowner to be responsible for the loading and stowing of cargo, and has imposed liability on the shipowner in the event that he is negligent in stowing and caring for cargo entrusted to his custody. This, however, is a far cry from holding that a shipowner is responsible for a cargo owner's negligence in handling and stowing his own cargo.

This is not a case where the vessel or barge was unseaworthy or where any conceivable negligent act of omission or commission on the part of the barge operator gives rise to the claim. In this case, the owner of the barge did not even see the cargo, and the damage in all probability existed prior to the time that the barge left the landing at Pittsburgh, before any Valley employee knew that her loading was completed.

The Court of Appeals has unanimously held that Valley as a common carrier by water was "under a legal duty to properly stow, care for and deliver the two shipments", and that its "attempt to relieve itself of the obligations 'to carefully handle and stow (the) cargo and to care for * * * (the) same was without legal effect' (App. infra, p. 15a). The basis for this holding was terra

[5] The judgment on Count 2 was for $2,086.84 with interest

neously, we submit) the Court's interpretation of Section 1 and Section 2 of the Harter Act, and the question is immediately presented whether these prohibitory sections of the Harter Act are self-operative: is there an "obligation" on the part of a river carrier to load cargo for a shipper? It is our submission that where the barge owner is in fact not negligent, and where the barge owner has no obligation to load or care for cargo, clauses limiting liability are not violative of the Statute and that the carrier would not be liable even in the absence of the clauses.

The very nature of barge carriage in the Mississippi River clearly shows that there is and could be no cargo handling or stowage or discharging obligation on the part of the barge owner. River transportation, as Your Honors know, has grown of age in recent years, and millions of tons of freight are moved on the inland waterways system. Transportation is accomplished by tows which move as much as four Liberty ships. A forty barge tow, each of the barges containing cargo weighing 600 or 800 tons, is a common occurrence on the Mississippi. Towboats with 8500 horsepower built at a cost in excess of a million dollars move these huge tows.

A tow is often brought downriver in a manner so that one or more barges can be dropped off or added without even stopping the tow. For example, if a barge loaded with grain is moving from Cairo, Illinois, to Memphis, Tennessee, in a tow destined for New Orleans, a small tug may meet the tow in mid-stream and take the barge out of the tow and bring it in to a Memphis elevator, or may add another barge to the tow, which might be too unmaneuverable or unwieldy to land at the facility to which the barge is destined. It often happens, as in the case before Your Honors, that a barge will be stopped off at a place where there is no facility other than a single plant, like Green River Iron & Steel Company at Owensboro, or a barge may be spotted at an elevator at St. Louis or

a sugar refinery near New Orleans for loading by the shipper. The very nature of the business indicates, we submit, that there can be no imposition of an obligation on the part of a barge owner to load, stow or discharge cargo.

It would, of course, be proper to charge a barge owner with liability for negligence in cargo handling if the barge owner in fact handled the cargo. Where the cargo is not handled by the barge owner, however, and where the shipper or shipper's agent undertakes the duty of loading and stowing or discharging, the historic duty which might exist on the owner of an ocean-going ship to load, stow and discharge simply does not exist.

We submit that the language in the many cases involving the imposition of liability on a shipowner for cargo damage due to improper stowage for the most part can be limited to the facts there present. In the case of an ocean-going ship which might have a manifest of hundreds of items of general cargo for hundreds of consignees, it would never do for each consignee to be responsible for the loading, stowing and discharging of his own shipment. On the other hand, how could a shipper be held responsible for the proper ventilation of a cargo on board a ship at sea? Obviously this is a direct responsibility of the shipowner, and so, too, is it a direct obligation of the shipowner to see that pig iron is not stowed on top of a cargo of eggs. Moreover, a shipowner must know his own vessel, and he must accept responsibility for cargo which is damaged due to stowage in a dirty compartment, for example.

Such is not true, we submit, in the case of a rail carrier or an inland water carrier where the shipper assumes the responsibility of loading. If a railroad car is spotted at a private industry track and is sealed after it has been loaded by the consignor, the rail carrier is not responsible for improper bracing of the cargo. The identical situation

holds true in the case of a river carrier who spots an empty barge at the consignor's plant and who takes the barge away, loaded, when it is sealed (in the case of a covered barge) just as is a rail car, or when it is loaded in such a way that it would be impossible for the carrier to see the under stowage and to determine if the lower tiers of the cargo were properly dunnaged and braced or were being crushed.

The decision of the Court below has achieved an improper result because the consignor has profited by his own wrongdoing. Obviously the act of the agent is the act of the principal, and if recourse is to be had by the consignor for the damages sustained, that recourse lies against his own agent, Marion, who improperly loaded and stowed the cargo. Recourse should not be had on the carrier, and there is nothing in the Harter Act, we submit, which would indicate that the carrier is required to pay the claim.

II.

Section 21 of the Bill of Lading Act[6] authorizes the use of a "Shipper's Load and Count" lading. That Act is clearly applicable to all common carriers whether rail, motor or water. (See Section 1 of the Act, 49 U. S. C. 81.) The rights or obligations of a carrier who does not load cargo are clearly delimited by Section 21 of the Act, which provides in unequivocal terms that when a bill of lading is endorsed to indicate that the shipper rather than the carrier has loaded, weighed and counted a shipment, the carrier is not liable for damages "caused by the improper loading" of the goods described in the bill of lading.

It is our submission that the carrier in this case simply followed the terms of Section 21 of the Bill of Lading Act and carried into its Tariff the statutory right accorded by the Act to absolve itself from liability for improper load-

[6] Quoted infra, p. 18a.

ing where that loading is performed by the shipper. The Court of Appeals glossed over the argument presented to it on this question for the reason that the reliance of Valley on the Bill of Lading Act "flies in the very teeth of the prohibitions of the Harter Act" (App. infra, pp. 12a-13a). It is submitted, however, that there could be no reason for the inclusion of all transportation within the provisions of the Bill of Lading Act unless water transportation was intended. Certainly the Harter Act, which had been law for 25 years, could not have been overlooked by Congress in 1916 when it enacted the Bill of Lading Act, and if the obligation of safe stowage may not be shifted to the shipper by a water carrier, an exception would have been carried into the Bill of Lading Act. This Court does not seem to have passed upon the point, but at least the Act was held to apply to water carriers by Judge Walsh in the Southern District of New York in **Toho Bussan Kaisha, Ltd. v. American President Lines, Ltd.**, 155 F. Supp. 887. It seems obvious that there are cases where a common carrier by water properly may use a "Shipper's Load and Count" lading, and we submit that there is no reason why the situation presented by this record is not one of those cases. The effect of the opinion of the Court of Appeals here is to write Section 21 of the Bill of Lading Act off the books.

III

Being a common carrier by water subject to Part III of the Interstate Commerce Act, Valley was required to file and did file a Tariff with the Interstate Commerce Commission in which the conditions governing the carriage of shipments were spelled out in detail. Chief among the conditions pertinent to the instant case is the condition in Section 16 of the bill of lading, which provides that Valley shall not be liable for improper stowage (App. infra, p. 21a). It is to be remembered that this term is

used in the context of having the shipper do its own stowage, and the bill of lading so provides.

The bill of lading expressly provides that the carrier waives the benefits of the Harter Act and the Limitation Act and assumes liability for damaged cargo occasioned by Acts of God and all other risks other than those specially excepted (App. infra, p. 21a). In other words, the carrier went far beyond its legal responsibility in assuming those extraordinary risks which generally fall upon a shipper.

It is our submission, of course, that the degree of liability of the carrier governs the level of its rates, and where important conditions of carriage such as are involved in the instant case are changed, the entire rate structure is changed. The assumption of liability by the carrier for Acts of God and for negligent navigation, coupled with the waiver of the benefit of the Limitation Acts, and further coupled with the assumption of liability for all losses of, damage to or expenses in connection with the shipment (other than from those excepted causes which are in the nature of areas controlled entirely by the shipper) certainly places the shipper in a much better position than a shipper on an ocean going vessel. These risks which are assumed by the carrier are those which customarily are protected by cargo insurance, and it was the intention of the regulated river carriers (all of whom have substantially similar Tariffs to that involved here) to bring themselves to a point where they could be competitive with rail and motor carriers in order to attract freight movements to their lines.

It is to be seen, therefore, that the position of the respondents which was adopted by the Courts below to the effect that the requirement that the shipper load and stow his own cargo, does not stand alone and should not be lifted out of context. This provision simply falls into the

overall policy of the barge lines to place upon a shipper the responsibility for areas over which the shipper has complete dominion and control in exchange for a broad assumption of liability by the carrier far beyond that imposed by law. This type of arrangement, embodied in the Tariff, has been held by the Court below to be improper, and without reference to the regulatory body which approved the rate structure. In support of its conclusion, the Court below relied on the decision of this Court in **Southwestern Sugar and Molasses Company v. River Terminals Corporation**, 360 U. S. 411, 79 S. Ct. 1210. We submit that this decision, far from supporting the conclusion of the Court, is diametrically opposed to that conclusion.

In **Southwestern Sugar**, the case of **Boston and Maine R. R. v. Piper**, 246 U. S. 439, 38 S. Ct. 354 involving a determination by the Court in the first instance that a provision in a Tariff was invalid, was distinguished because the clause there involved was specifically declared illegal by the Interstate Commerce Act itself. The direct holding of **Southwestern Sugar**, however, was

> "that the exculpatory clause here at issue should not be struck down as a matter of law, and that the parties should be afforded a reasonable opportunity to obtain from the I. C. C., in an appropriate form of proceeding, a determination as to the particular circumstances of the tugboat industry which lend justification to this form of clause if any there be or which militate towards a rule wholly invalidating such provisions regardless of the fact that the carrier which seeks to invoke them is subject to prospective and retrospective rate regulation. 'Cases are not decided nor the law appropriately understood apart from an

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See Brief for United States, pp. 36-41, 360 U. S. 411, 79 S. Ct. 1210.

informed and particularized insight into the factual circumstances of the controversy under litigation.' **Federal Maritime Board v. Isbrandtsen Co.**, 356 U. S. 481, 498, 78 S. Ct. 851, 861, 2d Ed. 2d 926. This principle has particular force when the courts are asked to strike down on grounds of public policy a contractual arrangement on its face consensual."

The fact that the clause under consideration in the above quotation was attacked from a public policy point of view rather than one involving statutory interpretation does not change the thrust of the holding, for, as has been said on numerous occasions, "Tariffs bind both carrier and shipper with the force of law." **Lowden v Simonds-Shields-Lonsdale Grain Co.**, 306 U. S. 516, 523, 59 S. Ct. 612, 614, 83 L. Ed. 953.

CONCLUSION.

For the reason assigned, it is respectfully submitted that this petition for a writ of certiorari to review the decision of the Court of Appeals for the Eighth Circuit should be granted and that the judgment of that Court, affirming the District Court, should be reversed.

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OPINION OF COURT OF APPEALS.

UNITED STATES COURT OF APPEALS
for the Eighth Circuit

No. 16,587

Mississippi Valley Barge Line Company, Appellant, vs. Inland Waterways Shippers Association, Inc., a Corporation, et al., Appellees.	Appeal from the United States District Court for the Eastern District of Missouri.

[April 26, 1961.]

Before SANBORN, VAN OOSTERHOUT, and MATTHES, Circuit Judges.

MATTHES, Circuit Judge.

This action for damage to goods shipped on two separate occasions was instituted in two counts in the Circuit Court of the City of St. Louis, Missouri, and because of diversity of citizenship and the amount involved, was removed by the defendant Mississippi Valley Barge Line Company, hereinafter referred to as "Valley" or "appellant", to the United States District Court, where, on trial by the court, a judgment was rendered in favor of plaintiffs on Count I in the amount of $3,386.31 and interest, and on Count II in the amount of $2,986.84 and interest.

On this appeal we have for disposition the primary question of whether plaintiffs, under the relevant undisputed facts and under controlling legal principles, are barred from recovery.

Valley is a common carrier by water and operates barges in the transportation of property. Plaintiff L. B. Foster Company, hereinafter called "Foster", purchased 620 bundles of new, galvanized iron prime fence pipe and employed plaintiff Inland Waterways Shippers Association, Inc., hereinafter called "Inland" (Foster and Inland, sometimes referred to as "appellees") to arrange for the transportation of the pipe from the manufacturer's plant in Pennsylvania to Foster's plant in Texas, and Inland, in turn, made arrangements for river shipment with Valley.

This pipe, which is the subject of Count I, was transported by rail from Sharon to Pittsburgh, Pennsylvania. Valley maintained no loading facilities at Pittsburgh and the actual loading was done by Marion Coal and Transfer Company, whole loading terminal was opposite Valley's fleet at the river in Pittsburgh. When a shipper had no loading terminal at Pittsburgh, Valley would notify Marion, and Marion would contact the shipper and make proper arrangements to act as stevedores. The shipper paid Marion's charges. In July of 1954, this pipe was loaded in Barge CTC-412, an open hopper type, by Marion. Valley's general freight agent at Pittsburgh testified that the barge was properly loaded "or we wouldn't have taken it out." Valley made up a loading diagram showing the position of the pipe after it was loaded on the barge. The 620 bundles were designated as Item 7, and constituted only a part of the entire cargo. On July 14, 1954, while the barge was being loaded, Valley's Pittsburgh office received a telegram from Valley's Houston, Texas office, advising that the barge was to stop at Cincinnati for additional tonnage. No covering was placed over the

cargo in the barge and it was exposed to the weather. However, it was customary to ship galvanized pipe uncovered as it is not susceptible to damage from exposure to the elements.

Barge 412 as loaded by Marion, was moved by Valley to Cincinnati, where it was placed at Valley's own terminal and on July 27, 1954, under the personal direction and supervision of Valley's terminal manager, 281,990 pounds of old, rusty, muddy, dirty pipe were loaded and stowed by Valley on Barge 412, and admittedly a portion thereof was placed above and on top of the new galvanized pipe. This scrap pipe had been purchased by Foster at Cincinnati and was to be delivered to Foster in Texas. Valley placed no covering over the new pipe prior to placing the old and rusty pipe on the barge. The barge with its entire cargo exposed to the elements was then transported to New Orleans, Louisiana, arriving there August 10, 1954. During this transportation, at least one heavy rain fell. Another carrier transported the new pipe from New Orleans to Houston, Texas, where it was unloaded, placed on a Missouri-Pacific railroad car and moved about 16 miles to the Pasadena Fence Company of Pasadena, Texas, which had purchased it from Foster while the shipment was en route. While the pipe was being transferred from the railroad car to trucks for further delivery, it was discovered that the galvanized pipe was damaged by stain caused by rust drippings. Pasadena refused to accept the shipment in the damaged condition and Foster was required to and did expend $3,386.31 in re-galvanizing the pipe. In summary, the foregoing constitutes the factual basis for Count I.

Count II grows out of the transportation by Valley of 10,000 feet of new prime electric-weld steel pipe purchased by Foster from Youngstown Sheet and Tube Company of Ohio in 1955. Again Inland was employed to arrange for transportation from the manufacturer's plant to Foster in

Houston, Texas, and Inland made all arrangements with Valley for river shipment. The pipe was loaded by Marion Coal and Transfer Company from railroad cars at Pittsburgh, Pennsylvania, into Valley's barges. Lot 9, consisting of 29 pieces of pipe, Lot 10—35 pieces, and Lot 11—29 pieces, the lots which turned out damaged, were, according to Valley's barge loading diagram, placed in Barge MV-618. This loading diagram shows no damage to any of the cargo at the time of the loading, except Lot 20, owned by other parties not involved in this action, which, according to the diagram, showed "bent tubing humped." Barge 618 was moved by Valley to Owensboro, Kentucky, where an additional 96,820 pounds of iron or steel billets were placed on board the barge, but the position of these iron or steel billets in the barge is not clear from the record. The loading diagram does reveal, however, that Lots 12 and 13, also the property of other parties, weighing a total of 204,090 pounds and including 22 bars weighing 4,209 pounds each, were placed immediately on top of Lots 9, 10 and 11, in Barge 618.

Barge 618 arrived at New Orleans, Louisiana and on June 9, 1955, it was transported from there to Houston, Texas, by another water carrier, where the cargo of pipe was placed on railroad cars and moved to Foster's plant. Upon arrival there, it was inspected and long dents were found in the walls of 43 pieces of pipe. The dented pipe was unusable and it was sold for scrap, resulting in a loss of $2,986.84, the amount of appellees' claim as incorporated in Count II of the complaint.

Three principal points were advanced in brief by appellant: Point I, "The Court erred in overruling defendant's motion for a judgment at the close of all the evidence"; Point II, "The exceptive clauses in the bill of lading validly exculpate Valley from liability herein"; Point III, "The Court erred in ruling that defendant had a common

law and statutory duty to properly load, stow, and discharge the cargo."

Three contentions are made to support Point I: (a) that appellees failed to meet the burden of proving damage to the shipment on outturn; (b) appellees failed to prove the shipments were in good order and condition at the time they were received by Valley; (c) the carrier is not liable where improper loading of barge is done by the shipper under a "shippers load and count" bill of lading.

There is no question of appellees' burden of proof. Concededly, in order to present a prima facie case, appellees here were required to establish that the goods were handed over to Valley in good condition and outturned in a damaged condition. Valley's contentions of error in this regard turn simply on questions of fact. Under this circumstance, the findings of the trial court cannot be disturbed on appeal unless they are shown to be clearly erroneous. Rule 52(a) Federal Rules of Civil Procedure; *Cleo Syrup Corporation* v. *Coca-Cola Co.*, 8 Cir., 139 F. 2d 416, 417, 418, cert. den. 321 U.S. 781; *Pendergrass* v. *New York Life Ins. Co.*, 8 Cir., 181 F.2d 136, 137, 138. The record conclusively convinces that there was adequate factual support for the trial court's finding that both shipments were in good condition and order when received by Valley and that they were damaged as claimed on outturn.

The galvanized iron fence pipe, subject of Count I, was new and had been purchased from a reputable manufacturer; the damage resulted from rust drippings and rust stains—not from rusting of the pipe. The loading diagram prepared by Valley contained no notation that the pipe was damaged in any respect when received and placed on the barge. Scrap pipe was loaded on Barge 412 by Valley above and on top of the new galvanized pipe, which was not protected by covering or otherwise. Atmospheric

condition, such as dew, rain and fog, while the pipe was on the barge, were such as to cause rust to drip from the old pipe upon the galvanized pipe. An expert witness was of the opinion that the rust stains occurred while the pipe was in possession of Valley. Except while the galvanized pipe was on Valley's barge, it was not susceptible to rust stains as it was the only cargo on railroad cars.

The contention respecting the large steel pipe, subject of Count II, is equally untenable. The pipe was new when purchased. Valley made no record on the loading diagram that the pipe was dented or damaged as was done with respect to Lot 20 (not involved here). The testimony of Valley's own expert witness convincingly refutes any argument that the pipe was not received in good condition or that it was not damaged when outturned. Mr. Schiffman, Vice-President of St. Louis Terminal Distributing Company, an expert in matters of barge-loading, after examination of the diagram showing the manner of stowing the cargo in Barge 618, and being apprised of relevant facts, was of the opinion that the dent damage possibly resulted from the placing of Lot 12, consisting of 22 bars weighing 92,610 pounds (each bar weighing in excess of 4,000 pounds) on top of Lots 11, 10 and 9, the steel pipe here involved.

The fact that no witness testified directly that the shipments were in good condition when received does not, in view of the strong circumstantial evidence present, effectively detract from the court's finding. See *California Packing Corp.* v. *States Marine Corp. of Del.* (N.D. Calif.), 187 F.Supp. 540, 542-543; *Warner Barnes & Co.* v. *Kokosai Kisen Kabushiki Kaisha (The Glasgow Maru)*, 2 Cir., 102 F.2d 450; *McNeely & Price Co.* v. *Ellerman & Bucknall S. S. Co.* (D. Pa.), 100 F.Supp. 339; *John R. Evans & Co.* v. *The Express* (D. Pa.), 100 F.Supp. 347; *United States* v. *Apex Fish Co.*, 9 Cir., 177 F.2d 364; and compare,

McNeely & Price Co. v. *The Exchequer* (D. Pa.), 100 F. Supp. 342.

Subsidiary contention (a) of Point I and Points II and III, viewed collectively, rest upon the premise that a third party, Marion Coal and Transfer Company, did the physical loading of appellees' goods involved in both shipments; that in so doing Marion was acting as the agent for the shipper, and that the proximate cause of the damage was loading in a negligent manner by shipper which relieved Valley of liability for the damage. In effect, Valley's argument is founded upon three alternative propositions: first, that it never had a duty to load or stow the cargo either under the common law or by statute; secondly, that appellees effectively and affirmatively assumed this duty under the shipper's load and count bill of lading; and thirdly, that certain provisions appearing on the reverse side of Valley's bill of lading and incorporated in its tariff, effectively exculpate Valley from damages caused by improper loading or stowage.

It is necessary to first carefully define the area of law which must govern resolution of the issues presented on this appeal. Of primary importance is the fact that Valley was carrying the goods here involved under a contract of affreightment; it was acting as a common carrier by water. Hence, we need not concern ourselves with consideration of duties and liabilities springing from contracts of mere towage alone, or from charter arrangements between parties. See *Oxford Paper Co.* v. *The Nidarholm*, 282 U.S. 681; *Sacramento Nav. Co.* v. *Salz*, 273 U.S. 326; *The Steamer Syracuse*, 79 U.S. 167, 171; *Bisso* v. *Inland Waterways Corp.*, 349 U.S. 85; *S. W. Sugar Co.* v. *River Terminals*, 360 U.S. 411; *The Coastwise*, 1 Cir., 233 F. 1, 4; *Baltimore & Boston Barge Co.* v. *Eastern Coal Co.*, 1 Cir., 195 Fed. 483, 485; *Mississippi Valley Barge Line Co.* v. *T. L. James & Co.* (E.D. La.), 144 F.Supp. 662, aff'd, 244 F.2d 263, cert. den., 355 U.S.

871; 48 Am. Jur. Shipping 323; Gilmore & Black, "Law of Admiralty," 1957, at p. 215 et seq.

At common law, a common carrier of goods by water was almost an insurer, being absolutely responsible for the safe arrival of cargo, unless the loss or damage was caused by an Act of God or of the public enemy, or by the inherent vice of the goods or the fault of the shipper, and even when the loss was caused by one of these, the carrier had to be free from negligence. *Propeller Niagara v. Cordes*, 62 U.S. (21 How.) 7, 23; *The Willdomino*, 3 Cir., 300 F. 5, 9, aff'd, *S. S. Willdomino v. Citro Chem. Co.*, 272 U.S. 718; Gilmore and Black, "The Law of Admiralty," supra, at p. 119. As bills of lading came into general use, water carriers began to insert various exculpatory clauses exempting them from liability for certain types of damage and eventually the bills came to include the exemption of the carrier even for damage resulting from its own negligence. Such negligence exemptions were generally upheld by the British courts, while the federal courts of the United States struck them down as being against public policy. See *The Delaware*, 161 U.S. 459, 471-474; *Liverpool Steam Co. v. Phenix Ins. Co.*, 129 U.S. 397, 437-463.[1] This was the historical setting which led to passage of the Harter Act of 1893, 27 Stat. 445, 46 U.S.C.A. §§190-196, designed to afford the cargo interests some protection against the exculpatory clauses and at the same time to permit the carriers to avoid liability under certain circumstances. Subsequently, and in 1936, the Carriage of Goods by Sea Act, 49 Stat. 1207 et seq., 46 U.S.C.A. §§1300-1315 (Cogsa), was enacted, supplanting the Harter Act in some respects.

We first give consideration to the design and purpose of the Harter Act which concededly is applicable to the

[1] Much of the background and historical material may be found in Gilmore and Black, supra, "The Law of Admiralty"; see, also, 48 Am. Jur., Shipping, §§ 381, 465

water carriage here involved. This statute does not lay down positive rules of law as to duties, responsibilities or liabilities—it does not impose any affirmative obligation on carriers. It simply forbids certain stipulations in the bills of lading. Since portions of the Act are of major importance in resolving the instant case, it is expedient that we set out the applicable provisions at some length:

"§ 190. Stipulations relieving from liability for negligence.

"It shall not be lawful for the . . . owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from liability for loss or damage arising from *negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge.* Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect." (Emphasis supplied).

"§ 191. Stipulations relieving from exercise of due diligence in equipping vessels.

"It shall not be lawful for any vessel transporting merchandise or property from or between ports of the United States of America and foreign ports, her owner, master, agent, or manager, to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel to exercise due diligence [to] properly equip, man, provision, and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents, or servants *to carefully handle and stow her cargo and to care for and prop-*

erly deliver same, shall in any wise be lessened, weakened or avoided." (Emphasis supplied).

Section 192 of the Act was designed to be a concession to the carriers, relieving them of strict common law liability. It provides:

> "If the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent, or charterers, shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel nor shall the vessel, her owner or owners . . . be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service."

Although Cogsa is not here applicable since admittedly it applies only to shipments by sea to or from ports of the United States in foreign trade, we nevertheless refer briefly to portions thereof in order to intelligently consider and discuss Valley's position. In contrast to the Harter Act, Cogsa, in regulating bills of lading, imposes certain positive responsibilities and liabilities upon the carrier and ship, including among others §1303(2), that the carrier "shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried." Thus, in considering Harter and Cogsa, it will be seen that Cogsa imposes an affirmative duty to use care in respect to the cargo while Harter forbids stipula-

tions which eliminate the common law duty to exercise care in respect to the cargo. See *Gilmore* and *Black*, supra, at p. 127.

We now give attention to the stipulation found in the bills of lading covering the shipments herein and upon which Valley relies to escape liability. Appearing on the reverse of the bill covering the pipe, which is the subject of Count II, we find this language:

> "Sec. 10(a) . . . liability is assumed for general average, salvage charges and physical damages to or loss of the shipment howsoever occurring (including, but not limited to, fire, explosion, marine perils and Acts of God); *provided that the carrier shall not be liable for* delay in the delivery of the shipment, or for loss of, damage to, or any expense in connection therewith, caused directly or indirectly by or resulting from or arising out of: shrinkage, expansion, or other change due to natural causes; any vice or defect in the shipment (including country damage to cotton); the act or default of the shipper or owner; *insufficiency of packing; improper stowage, or the physical act of loading or unloading, when not performed by carrier. . . .*"[2] (Emphasis supplied).

In summary, Valley's position in relying upon this exemption is that the terms incorporated in its bill of lading are a part of its approved tariff and that such provisions, including a stipulation as to "shipper's weight, load and count," are all valid and in accordance with the Federal Bill of Lading Act, §21, 39 Stat. 541, 49 U.S.C.A. §101. Although conceding the applicability of the Harter Act, Valley advances the ingenuous argument that, inasmuch

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[2] There is some question raised as to changes in tariff provisions applicable to the two separate shipments, the main difference being that one tariff did not include the term "improper stowage." However, for the purposes of this opinion, we shall proceed on the theory that both bills of lading purported to except liability for improper stowage.

as this statute imposes no affirmative duties, in contrast to Cogsa, it never is under duty to load and stow the cargo, thus in effect arguing that it would only be unlawful and contrary to the statute to exempt itself from liability for improper loading and stowage if it had expressly stipulated, agreed to assume, and did assume, the duties of loading and stowage.

As we view the history of the Harter Act and the plain and explicit provisions thereof, we are satisfied and convinced that the voiding of exculpatory clauses for "negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery," encompassed in §190, and the provision of §191 making it unlawful to insert in any bill of lading any agreement "whereby *the obligations* of the master * * * to carefully handle and stow her cargo and to care for and properly deliver same, shall in any wise be lessened, weakened or avoided," presuppose an outstanding duty imposed by law in this regard. (Emphasis supplied). See, *The Germanic*, 196 U.S. 589, at p. 596, decided prior to Cogsa. Valley has not cited any case directly supporting its contention that it had no such duty. The cases upon which it places reliance involve private charter of vessels, or contracts of mere towage, where, by the terms of the contract, the shipper has undertaken the duties of loading, stowage, etc. See discussion and cases cited p. 8, supra. Likewise, of no persuasive consideration are cases involving rail carriers, frequently bringing into play a "shipper's load and count" bill of lading. See *Robinson* v. *New York Central R. Co.*, 282 N.Y.S. 877, aff'd, 270 N.Y. 659; *Perkel* v. *Pennsylvania R. Co.*, 265 N.Y.S. 597; *South Carolina Asparagus Growers' Ass'n* v. *Southern Ry. Co.*, 4 Cir., 46 F.2d 452; *Standard Hotel Supply Co.* v. *Pennsylvania R. Co.* (S.D.N.Y.), 65 F.Supp. 439, upon which Valley relies. Under the circumstances presented by this record, reliance upon a shipper's load and count bill of lading flies in the very

teeth of the prohibitions of the Harter Act, supra. We have been cited to no case sustaining such a bill of lading in the face of this statute, and our independent research has not revealed a case precisely in point although there are, of course, cases involving ocean going vessels arising before and after Cogsa which reiterate the proposition that a water carrier is liable for faults or omissions in regard to the loading, stowage and care of goods en route. See *United States* v. *Apex Fish Co.*, 9 Cir., 177 F.2d 364; *Schnell* v. *The Vallescura*, 293 U.S. 296, 305, 306; *General Foods Corporation* v. *The Troubador* (S.D.N.Y.), 98 F. Supp. 207, 210; *The Charlton Hall* (S.D.N.Y.), 285 F. 640; *The Germanic*, 196 U.S. 589; *Etablissements Edouard Materne* v. *The S. S. Leerdam* (S.D.N.Y.), 143 F.Supp. 367; and see *Mackey* v. *United States* (S.D.N.Y.), 83 F. Supp. 14, aff'd, 197 F.2d 241 (involving loss of goods before actual loading on board vessel). From these cases it readily appears that proper stowage of goods is of particular importance in water carriage, both for the seaworthiness and safety of the vessel, as well as for proper care of the goods en route. See *The Germanic*, supra, 196 U.S. 589, where it was found that negligent unloading so disturbed the center of gravity of the ship that it sank at the dock.[3] In the record before us there was evidence that Valley was much concerned with the supervision and problems of proper loading and stowage. One of Valley's agents testified that improper loading can result in a barge standing on end, or buckling. The significance of this matter was pointed out by another agent in these words:

> "But a hopper barge is particularly vulnerable to that type of loading because you haven't got the support. You have got to distribute your load even in loading. You have—now you have got three lots even

[3] In the opinion of the Lower court it appears that the master and crew of *The Germanic* had no actual part in the negligent unloading, since discharge of the cargo was effected and supervised by stevedores. See *The Germanic*, 2 Cir., 124 F. 1, pp. 6, 7

> in loading. You have to load it separately so as not to put an extra stress on a hopper barge."

The case of *Abbott* v. *Tompkins* (Ct. of Civ. App. of Tex.), 283 S.W. 647 (1926), is of particular interest, inasmuch as there, apart from the question of the Harter Act, the court discussed the duty of the barge owner under the common law for proper loading and stowage of cargo. The cargo there involved was rice and the loading was done by warehousemen acting as agents for the shipper. The jury found that the loading was negligently performed, in that the rice should have been stacked in pyramid form to shed water, and that this negligence was the proximate cause of the damage. In reversing the judgment for the carrier, the court observed, at p. 648:

> "Where the shipper assumes the duty of loading, the carrier may refuse to accept the goods for transportation when the loading is done in an improper or unsafe manner. If the carrier, with full knowledge of the manner in which the loading was done, does accept the shipment without objection, the shipper may assume that the manner of loading was satisfactory to the carrier."

As to the contention that the tariff provisions are valid until the Interstate Commerce Commission takes some action to disapprove them, it is clear to us that if the provisions of a tariff are in derogation of the Harter Act, they are invalid and unenforceable, even though embodied in the tariff, and no recourse need be had to the Interstate Commerce Commission before the court can act. See *S. W. Sugar Co.* v. *River Terminals*, supra, 360 U.S. 411, footnote 9 at p. 420; *Mississippi Valley Barge Line Co.* v. *T. L. James & Co.*, supra, 144 F.Supp. 662, at p. 667, 244 F.2d 263 at p. 267.

The argument is also advanced that the Harter Act has been modified by the provisions of the Bill of Lading Act, which was subsequently enacted. We are not so persuaded.

There is nothing in the latter statute to suggest that Congress intended to repeal the Harter Act provisions, and the two Acts may reasonably be read together as compatible legislation. See *Gardner* v. *The Danzler*, 4 Cir., 281 F.2d 719, 724-726.

In summary, we hold that Valley, acting here as a common carrier by water, and regardless of the actual extent of its supervision and control of Marion, was under a legal duty to properly stow, care for and deliver the two shipments; that the damage was proximately caused by negligence in these particulars; and that the attempt to relieve itself of the obligation "to carefully handle and stow [the] cargo and to care for * * * [the] same" was without legal effect.

The judgment is

Affirmed.

A true copy.

Attest:

Robert C. Tucker,

Clerk, U. S. Court of Appeals, Eighth Circuit.

(Seal)

JUDGMENT.

United States Court of Appeals
For the Eighth Circuit.

No. 16,587. September Term, 1960.

Mississippi Valley Barge Line Company,
Appellant,

vs.

Inland Waterways Shippers Association, Inc., a corporation, and L. B. Foster Company, a corporation.

Appeal from the United States District Court for the Eastern District of Missouri.

This Cause came on to be heard on the record from the United States District Court for the Eastern District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

April 26, 1961.

ORDER DENYING PETITION FOR REHEARING.

United States Court of Appeals
For the Eighth Circuit.

September Term, 1960.

Mississippi Valley Barge Line Company, Appellant, No. 16587. vs. Inland Waterways Shippers Association, Inc., et al.	Appeal from the United States District Court for the Eastern District of Missouri.

The Court has considered appellant's petition for rehearing and is of the opinion that the petition should be, and it is hereby, denied.

May 22, 1961.

Statutes.

The Harter Act, 27 Stat. 445 (1893), 46 U. S. C. 190, 191, 192, provides in pertinent part as follows:

Section 1.

"It shall not be lawful for the manager, agent, master, or owner of any vessel transporting merchandise or property from or between ports of the United States and foreign ports to insert in any bill of lading or shipping document any clause, covenant, or agreement whereby it, he, or they shall be relieved from

liability for loss or damage arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge. Any and all words or clauses of such import inserted in bills of lading or shipping receipts shall be null and void and of no effect."

Section 2.

"It shall not be lawful for any vessel transporting merchandise or property from or between ports of the United States of America and foreign ports, her owner, master, agent, or manager, to insert in any bill of lading or shipping document any covenant or agreement whereby the obligations of the owner or owners of said vessel to exercise due diligence properly equip, man, provision, and outfit said vessel, and to make said vessel seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents, or servants to carefully handle and stow her cargo and to care for and properly deliver same, shall in any wise be lessened, weakened, or avoided."

Section 3.

"If the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped, and supplied, neither the vessel, her owner or owners, agent, or charterers, shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel nor shall the vessel, her owner or owners, charterers, agent, or master be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing

carried, or from insufficiency of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service."

The Bill of Lading Act, 39 Stat. 541 (1916), 49 U. S. C. 101, provides in pertinent part as follows:

Section 21.

"When package freight or bulk freight is loaded by a shipper and the goods are described in a bill of lading merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill of lading that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill of lading, such statements, if true shall not make liable the carrier issuing the bill of lading, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may also by inserting in the bill of lading the words 'Shipper's weight, load, and count,' or other words of like purport, indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the goods described in the bill of lading: Provided, however, Where the shipper of bulk freight installs and main-

tains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier, upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carriers shall not in such cases insert in the bill of lading the words 'Shipper's weight,' or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein."

The Interstate Commerce Act (1887), as amended, Part III, 54 Stat. 935, 49 U. S. C. 906, provides in pertinent part as follows:

Section 906.

"(a) Every common carrier by water shall file with the Commission, and print, and keep open to public inspection tariffs showing all rates, fares, charges, classifications, rules, regulations, and practices for the transportation in interstate or foreign commerce of passengers and property between places on its own route, and between such places and places on the route of any other such carrier or on the route of any common carrier by railroad or by motor vehicle, when a through route and joint rate shall have been established. Such tariffs shall plainly state the places between which property or passengers will be carried, the classification of property or passengers and, separately, all terminal charges, or other charges which the Commission shall require to be so stated, all privileges or facilities granted or allowed, and any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such rates, fares, or charges, or the value of the service rendered to the passengers, shipper, or consignee.

"(c) No common carrier by water shall charge or demand or collect or receive a greater or less or different compensation for transportation subject to this chapter or for any service in connection therewith than the rates, fares, or charges specified for such transportation or such service in the tariffs lawfully in effect; and no such carrier shall refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities for transportation affecting the value thereof except such as are specified in its tariff: Provided, That the provisions of sections 1 (7) and 22 of this title (which relate to transportation free and at reduced rates), together with such other provisions of chapter 1 of this title (including penalties) as may be necessary for the enforcement of such provisions, shall apply to common carriers by water.

"(d) No common carrier by water, unless otherwise provided by this chapter, shall engage in transportation subject to this chapter unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this chapter. No change shall be made in any rate, fare, charge, classification, regulation, or practice specified in any effective tariff of a common carrier by water except after thirty days' notice of the proposed change filed and posted in accordance with this section. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. The Commission may, in its discretion and for good cause shown, allow changes upon notice less than that herein specified, or modify the requirements of this section, either in particular instances or by general order applicable to special circumstances or conditions."

Miscellaneous.

Mississippi Valley Barge Line Company Freight Tariff, 25-C, I. C. C. 101, Item 700, as amended, provides in pertinent part as follows:

Section 10.

"(a) Subject to the limitations on recovery set forth in Section 2 hereof, liability is assumed for general average, salvage charges and physical damages to or loss of the shipment howsoever occurring (including, but not limited to, fire, explosion, marine perils and Acts of God); provided that the carrier shall not be liable for delay in the delivery of the shipment, or for loss of, damage to, or any expense in connection therewith, caused directly or indirectly by or resulting from or arising out of: shrinkage, expansion, or other change due to natural causes; any vice or defect in the shipment (including country damage to cotton); the act or default of the shipper or owner; insufficiency of packing; improper stowage, or the physical act of loading or unloading, when not performed by carrier; the authority of law, including, without limitation, quarantine and embargo; or the acts of the public enemy, hostilities or warlike operations, whether or not there be a declaration of war.

(b) Anything herein contained to the contrary notwithstanding, liability is assumed only for cargo safely aboard vessel when loading and or discharging is not performed by carrier.

(c) In connection with the assumption of liability herein provided for, the carrier expressly waives the benefit of any protection, limitation of liability or exemption accorded it by the Harter Act (Act of February 13, 1893, 46 U. S. C. 190 et seq.) and the Limited Liability Act of March 23, 1851 (R. S.) 4281 et seq., 46 U. S. C. 181 et seq.) and all acts amendatory thereof and supplementary thereto."